

STATE OF INDIANA  
DEPARTMENT OF NATURAL RESOURCES  
LEASE AGREEMENT  
WITH  
\_\_\_\_\_

**Note: this is a draft lease and subject to change through negotiations and circumstances involved in the proposal process. Some clauses cannot be deleted or changed as they are "mandatory clauses" by the state.**

THIS LEASE, made and entered into this \_\_ day of \_\_\_\_\_, between \_\_\_\_\_ "Lessee", and the Department of Natural Resources of the State of Indiana, "Lessor", Witnesseth that:

WHEREAS, the Lessor is authorized by IC 14-18-2 to lease land under its management and control for the purpose of having developed thereon public outdoor recreation or service facilities, and

WHEREAS, the Lessor has determined it to be in the public interest to contract with the Lessee for the purpose of planning, building, operating and maintaining certain recreational and service facilities at the Potato State Park, specifically, the "Inn at Potato Creek State Park".

NOW THEREFORE, in consideration of the premises, the mutual covenants herein contained, and each act performed hereunder by either of the parties, the Lessor and Lessee enter into the following Lease Agreement:

ARTICLE 1

Exhibits Attached and Leased Real Estate

Section 1.01. Exhibits.

The following exhibits are attached to and made a part of this Lease:

- |            |  |
|------------|--|
| Exhibit A. | Proposal for the "Inn at Potato Creek" as submitted by _____ |
| Exhibit B. | Request for Proposal <b>14-109</b>                           |
| Exhibit C. | List of State Owned Property                                 |
| Exhibit D. | Legal Description of Leased Area                             |

Section 1.02. Leased Real Estate.

The Lessor hereby lets and demises to the Lessee, and the Lessee hereby leases from the Lessor the real estate described in Exhibit D. Such real estate is referred to in this Lease as the "Leased Real Estate".

ARTICLE II

Terms and Renewals

Section 2.01. Original Term.

The "Original Term" of this Lease shall be for a period of forty \_\_ years, commencing on the \_\_ day of \_\_\_\_\_, 201\_, or the date of the final signature whichever is the latter, and ending on the December 31, 20\_\_.

Section 2.02. Renewals.

Lessor grants to Lessee options to extend the Original Term for \_\_\_\_ additional \_\_ year terms, on the same terms and conditions as herein set forth; provided, however, that the customer service has been of a quality satisfactory to the Lessor, and that the Lessee is not in default in the performance of any of its obligations hereunder. Lessee may exercise the renewal option by submitting in writing to Lessor a notice of renewal, for approval by DNR, at least one hundred eighty (180) days prior to termination of the Original Term.

Section 2.03. Holding Over.

In the event the Lessee remains in possession of the Leased Real Estate after the expiration of the Original Term and without the execution of a new lease, it shall be deemed to be occupying the Leased Real Estate as a

tenant from month-to-month, subject to all conditions, provisions and obligations of the Lease insofar as the same are applicable to a month to month tenancy. However, in no event shall said month-to-month tenancy exceed a period of twelve (12) months and the month-to-month tenancy shall automatically terminate at that time, if not previously terminated. Should the lease automatically terminate as stated herein, Lessee shall have a minimum of forty five (45) days in which to vacate the Leases Real Estate.

Section 2.04. Sale of Business.

At any time during the Original Term, the Lessee shall have the right to sell the Lessee's business and improvements for "just cause" to a party approved by the Lessor. The Lessor reserves the right to be a third party in the negotiations for sale.

Section 2.05. No Unnamed Partners.

The Lessee assures that there are no unnamed partners legally interested in or having authority over the operation or management of the business and further assures that only the persons signing the Lease are responsible for carrying out the duties as written in the Lease. In the event one or all of the persons signing this lease sells their interest, in whole or part, the Department reserves the right to approve or disapprove such transaction.

ARTICLE III  
Rent

Section 3.01. Rental Fee.

**The following is based upon a percentage fee basis. Depending on proposals and negotiations in reference to how the fee is paid, this clause could change in its entirety.**

The Lessee shall pay to the Lessor a Rental Fee with respect to each year of the Original Term, and any renewals, in the amount equal to \_\_\_ percent (\_\_\_%) of the gross receipts derived from the business operations conducted on the Leased Real Estate for the first \_\_\_\_\_ of gross receipts for each year. The Lessee shall also pay to the Lessor, an additional Rental Fee with respect to each year of the Original Term, and any renewals, in the amount equal to \_\_\_percent (\_\_\_%) of the gross receipts derived from the business operations conducted on the Leased Real Estate in excess of \_\_\_\_\_ of the gross receipts for each year.

Section 3.02. Gross Income.

The term "Gross Income" as used herein shall be construed to include the entire amount of the actual sales or rental price, whether for cash or otherwise, of all sales or rentals of merchandise and service, and all other receipts from all businesses conducted in or from the Leased Real Estate, including, but without limitation to, **room rental, gift shop revenue**, food products, alcohol, receipts from mail or telephone orders received or filled at the Leased Real Estate, all deposits not refunded to purchasers or equipment renters, orders taken, although such orders may be filled elsewhere, and sales by any subtenant, concessionaire, licensee or person otherwise in the Leased Real Estate and any income of future sales income derived from services approved by the Lessor. If any one or more divisions of Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Gross Receipts for the purpose of fixing the Rental Fee and any Additional Rental payable thereunder all the Gross Receipts of such division, whether such sales or rentals of merchandise or service be made at the Leased Real Estate or elsewhere, in the same manner and with the same effect as if the business or sales or rentals of such divisions of Lessee's business had been conducted by Lessee itself. Gross Receipts shall not include however, (i) discounts and/or allowances made to customers, or any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, (ii) the amount of returns to shippers or manufacturers, (iii) the amount of any cash or credit refunds made upon any sale or rental where the merchandise or service sold or rented or some part thereof is thereafter returned by the purchaser or renter and accepted by the Lessee, (iv) sales of moveable or trade fixtures. Interest collected or carrying charges shall be included in gross sales calculations. Advanced deposits for future services shall not be included in the calculation for Rental Fee or any Additional Rent until such time as the deposit is applied for the service provided, however, any interest accrued to the Lessee due to advanced deposits shall be included in the Gross Receipts. The Lessee shall maintain an accurate advanced deposit ledger showing date of deposit, refund of deposit, and deposit applied in a manner acceptable to the internal audit staff of the Department.

Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Lessee shall receive payment (whether full or partial) therefore.

For coin operated devices, only the amount retained by the Lessee shall be recorded as a sale (as long as such devices provide only an incidental portion of Lessee's sales). Items which are sold at a convenience to the customer, but do not have any additional charges collected are exempt from rental fees. This would include, but is not limited to, items such as park entrance permits, fishing licenses, etc.

**Section 3.03. Statements of an Accounting for Gross Income.**

The Lessee shall keep and make available at the Leased Real Estate, or at a licensed accounting service facility, complete, true and accurate records of its Gross Income for the purpose of determining the amount of the Rental Fee and any Additional Rent payable with respect to each year of the Accounting Term. The records shall be open for inspection from time to time by the Lessor or its duly authorized representative during the regular business hours and for a period of five (5) years after each statement of Gross Income is submitted. The records shall show inventories and receipts at the Leased Real Estate, and daily receipts from all sales and rentals and other transactions on or from the Leased Real Estate by Lessee and any other persons conducting business upon or from the Leased Real Estate. The records shall also include all Federal, State and local tax returns of Lessee relating to Lessee's Gross Receipts. The records shall be provided to the Lessor at the Leased Real Estate site or at another location as directed by the Lessor.

**Section 3.04. Monthly Report and Payment of Rental Fee.**

On or before the end of the following month of the Accounting Term, Lessee shall submit to Lessor a report of Gross Income (hereinafter referred to as the "Monthly Report"), made from the Leased Real Estate during the preceding Month of the Accounting Term. The Monthly Report shall be accompanied by payment of any Rental Fee and any Additional Rent due for such month of the Accounting Term.

**Section 3.05. Annual Report and Payment of any Additional Rent.**

On or before sixty (60) days after the end of each year of the Accounting Term, Lessee shall submit to Lessor a report of Gross Income (hereinafter referred to as the "Annual Report") prepared by an independent Licensed Public Accountant which may be the Licensed Public Accountant customarily employed by the Lessee, made from the Leased Real Estate during the preceding year of the Accounting Term. The report shall show all the Gross Income for the entire year, a summary of the Monthly Reports and any Rental Fee and Additional Rent paid during the Accounting Year. Any adjustments to any of the Monthly Reports previously submitted shall be noted and justified. Any amounts due for the Rental Fee or Additional Rent above amounts previously paid shall be sent with the Annual Report. Any amounts owed to the Licensee due to adjustments which cause the Rental Fee or Additional Rent shall be taken as a credit by the Licensee for the next reportable month.

**Section 3.06. Audit.**

The acceptance by Lessor of payments of any Rental Fees shall be without prejudice to the Lessor's right to an examination of Lessee's books and records of its Gross Income in order to verify the amount of Gross Income received by the Lessee in and from the Leased Real Estate. The Lessor shall have the right from time to time by its accountants and/or auditors or duly authorized representatives to audit all Annual Reports or other statements of Gross Receipts disclosed in any statement given to Lessor by Lessee. In the event the audit shows an understatement of Gross Income in excess of four percent (4) of the actual Gross Income, the expense of the audit shall be paid by Lessee. In the event the audit shows the Rentals actually due to be less than the amount of such rentals paid by the Lessee, the amount by which the Rentals so paid exceeds the amount shown by the audit to have been actually due shall be applied by the Lessor on the next Monthly Report or refunded to the Lessee if paid with respect to the last year of the Accounting Term. In the event the audit shows the any Rental Fees actually due are more than the amount of such rental paid by the Lessee, the Lessee shall promptly pay to the Lessor the amount of the deficiency together with interest at the rate of eight percent (18%) per annum from the date such deficiency should have been paid.

**Section 3.07. Failure to Prepare Reports.**

If Lessee shall fail to prepare and deliver within the time herein specified any statement of Gross Income required hereunder, whether an Annual Report or otherwise, the Lessor may elect to treat Lessee's said

failure as a breach of this Lease, entitling Lessor to terminate this Lease and Lessee's right to possession of the Leased Real Estate, but only after Lessor has given Lessee notice in writing as hereinafter provided. If Lessee fails to prepare and deliver a statement within thirty (30) days after receiving notice, Lessor may also elect to make an audit of all books and records of Lessee, including Lessee's bank accounts which in any way pertain to or show Gross Income and to prepare the statement or statements which Lessee has failed to prepare and deliver. Such audit shall be made and such statement or statements shall be prepared by an accountant selected by Lessor. The statement or statements so prepared shall be conclusive on Lessee, and the Lessee shall pay on demand all expenses of such audit and of the preparation of any such statements and all sums as may be shown by such audit to be due as the Rental Fee or any Additional Rent.

Section 3.08. Payments.

Rental checks are to be made payable to Department of Natural Resources and mailed to Division of State Parks and Reservoirs, 402 W. Washington St., RM W298, Indianapolis, Indiana 46204 or otherwise as designated by the Lessor from time to time in a written instrument delivered to Lessee.

Section 3.09. Inspection and Lien

To secure the payment of the Rental Fee, the Lessor is given a lien on all personal property belonging to the Lessee, which may be located on the Leased Real Estate and used in the operation of the business conducted under the Lease and, Lessee hereby authorizes the Lessor to file a Financial Statement, UCC-1. The Lessor reserves the right to enter the licensed premises, without prior notification, at any time for inspection and/or investigative reasons.

ARTICLE IV  
Facility Development

Section 4.01. Plans and Specifications.

The Lessee shall submit plans and specifications for all structures and improvements to be constructed on the Leased Real Estate for the review and approval of Lessor. Construction of the facilities described in the plans and specifications shall not commence until Lessee receives Lessor's written approval.

The Lessor reserves the right to conduct on-site inspections of the facility to ensure proper adherence to applicable building codes. These include, but are not limited to, the Indiana Electrical Code, the Indiana Building Code, and NFPA 303. The Department has the right to cause the Lessee to cease and desist a portion of or the entire operation of the lease until corrections to the facility have been made to the satisfaction of the Department.

Section 4.02. Expansion of Facilities.

The Lessee shall have the right to expand the facilities and services provided at the Leased Real Estate provided that they are compatible with the facilities and services set forth and have prior written approval of the Lessor. At any time if the facility is not in compliance as deemed by an annual compliance inspection, the Lessee may not expand the facility.

Section 4.03. Use of Lessor Facilities.

The Lessor may, over the term of the Lease allow the Lessee use of some buildings and equipment. A description of these buildings and equipment is found in Exhibit E. The Lessee will be responsible for the maintenance of those buildings and items of equipment during the Original Term, and any renewals, and shall return them to the Lessor at the termination of the Lease in a condition equivalent to that in which they were received by the Lessee, less normal wear and tear.

The Lessee agrees to accept the buildings and equipment on an as-is basis. Any repairs or maintenance required shall be at the sole expense of the Lessee. The Lessee is responsible to maintain the road, parking lots and other paving within the Leased Real Estate. This would also include snow removal. Lessee is also responsible to keep the grounds in a well-kept manner, which would include mowing, trimming, and invasive species removal. The Lessor shall not be responsible for any loss of gross receipts, or products, due to the

malfunction of any equipment owned by the Lessor. Under no circumstances will the Lessor listed buildings and equipment become the property of the Lessee.

**Section 4.04. Preservation of Environment.**

In the furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91-90, 42 USC 4321, 4331-4335) and Executive Order 11514, entitled "Protection and Enhancement of Environmental Quality" March 5, 1970 (35 Federal Register 4247, March 7, 1970) the Lessee acknowledges the importance of the preservation and the elimination of environmental pollution. During construction and at all times during the Original Term (and any renewals thereof), Lessee shall comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Lessee shall take appropriate action to promote and foster (i) reduction of chemical vapors and control of engine exhaust gases and smoke from heaters; (ii) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (iii) minimization of noise levels; (iv) on-and-off-site disposal of waste and spoil resulting from construction or operational activities; (v) prevention of landscape defacement and damage; (vi) prevention of flotation materials migrating into the lake; (vii) provide a spill plan for hazardous materials.

Before any construction commences on the Leased Real Estate, Lease shall comply with all rules and regulations, both Federal and State, in regard to archeological and historical investigation. Lessee is responsible to file, and pay for, any and all permits required to conduct such investigations. Lessee is also responsible to obtain an endangered species review from the appropriate Federal and state Fish and Wildlife offices.

**Special Consideration to Historic Structures**

None of the facilities in the offer are listed on the National Register of Historic Places, but some of the buildings not listed on the register may still fall under the regulation of the State Historic Preservation Office, due to their age and historic significance and as such historic preservation laws, standards and guidelines shall be followed by the operator.

**Federal Historic Preservation Laws**

These laws lay the foundation for the National Park Service as the lead Federal preservation agency and for the national historic preservation partnership that includes NPS, other Federal agencies, Tribal Preservation Offices, State Historic Preservation Offices, Certified Local Governments, and private organizations. **For** a free copy, send an e-mail to [nps\\_hps-info@nps.gov](mailto:nps_hps-info@nps.gov) with your mailing address.

**Standards and Guidelines**

Since their publication in 1976, the Secretary's Standards developed by the National Park Service have been used by State Historic Preservation Officers and the National Park Service to ensure that projects receiving Federal grant money or tax benefits were reviewed in a consistent manner nationwide. The principles embodied in the Standards have also been adopted by hundreds of preservation commissions nationwide in local design guidelines. While the Standards provide a consistent philosophical framework for treatment, the Guidelines suggest a model process to follow in the work, and thus assist in applying the Standards to historic buildings.

**Section 4.05. Structures Erected by Licensee.**

The Lessee may, during the term of this Lease, erect structures and provide equipment upon the premises, which temporary structures and equipment shall be and remain the property of the Lessee, provided; however, that no structure may be erected or altered upon the premises unless and until the design and proposed location or alteration thereof is approved in writing by the Lessor. All permanent structures will become property of the State of Indiana at the termination of the lease. Permanent structures shall be any structure which is so affixed to the real estate to become part of the real estate. Before any new construction takes place, the determination as to whether the structure shall be considered permanent or temporary shall be made by the Department in writing.

#### Section 4.06 Codes and Standards

All projects shall meet and comply with the applicable portions of the latest editions of the standards and codes. Below is a partial list of the most frequently used codes and standards.

- Indiana Building Code - Uniform Building Code (UBC).
- Indiana Mechanical Code - Uniform Mechanical Code (UMC)
- Indiana Electrical Code - National Fire Protection Association (NFPA)
- National Electrical Code (NEC)
- Indiana Fire Prevention Code - Uniform Fire Code (UFC)
- IOSHA
- Indiana Energy Conservation Rules and Regulations
- Indiana Plumbing Code - Building Officials Code Administrators (BOCA)
- Structural Engineering Codes ACI –
- American Concrete Institute,
- AISC - American Institute Steel Construction
- ATI-American Timber Institute
- National Pollution Discharge Elimination System (NPDES)
- Campground Standard
- Swimming Pool Code
- Safe Drinking Water Act
- Americans with Disability Act (ADA)

The Lessee is responsible for assuring that any project has any and all permits needed for approval and completion of the project. The Lessee is also responsible for any fees associated in obtaining such permits.

#### Section 4.07. Surrender.

Upon the expiration of the term or earlier termination of this Lease, Lessee shall (a) surrender to Lessor the Leased Real Estate and the Lessee Improvements, in good order, condition and repair, wear and tear and the effects of time excepted and (b) remove from the Leased Real Estate and the Lessee Improvements all fixtures, signs, equipment and other personal property belonging to Lessee and Sub-lessees.

### ARTICLE V Maintenance

#### Section 5.01. Lessee's Obligation.

Throughout the Original Term, and any renewals, Lessee shall, at its own expense, keep the Leased Real Estate and any improvements erected thereon in good condition and repair at all times, reasonable wear and tear and the effects of time excepted. The Lessee shall not permit refuse, trash or garbage to accumulate or to gather in or about any of the buildings, structures or facilities on the Leased Real Estate and shall provide and use suitable covered trash and garbage receptacles. The Lessee shall, at its own expense, remove and dispose of all garbage, rubbish and trash in a manner satisfactory to the Lessor and in compliance with the State Board of Health regulations and all other applicable regulations.

#### Section 5.03. Use.

The Lessee shall not permit or suffer any objectionable use of the Leased Real Estate which might or does constitute a public nuisance or be in violation of any law, ordinance or regulation legally applicable to the use of the Leased Real Estate.

#### Section 5.04. Failure to Maintain Leased Real Estate.

If the Lessee fails to maintain the Leased Real Estate as provided in Section 5.01, the Lessor may either terminate this Lease as provided in Article XIII (after giving proper notice) or may cause such repairs, replacements to be made and the cost of any such repairs or replacements made by the Lessor (including the cost of materials, supplies and labor) shall be an Additional Rental payable by the Lessee on or before thirty (30) days after Lessor completes said repairs and submits an itemized statement of the cost of said repairs to

Lessee. The Lessee shall pay the cost of such work, whether performed by the Lessor or by others, at the discretion of the Lessor. This payment shall be made without protest.

Section 5.05 Sanitation and Cleanliness.

The Lessee shall perform cleaning and janitorial services within the Leased Real Estate. These services include, but are not limited to, the cleaning of all floors, windows, and fixtures, and the replacement of light bulbs. The Lessee shall keep the premises occupied under the Lease in a clean and sanitary condition and in conformity with standards and rules for sanitation and public health. The Lessee agrees to pay the cost of trash removal for the Leased Real Estate.

The Lessee shall maintain standards of cleanliness which will reflect favorable public opinion on the Lessee and the Department. The Lessor may perform or have others perform the duties of the Lessee under this Section, if the Lessor determines the Lessee has failed to maintain an acceptable standard of cleanliness. The Lessee shall pay the cost of such work, whether performed by the Lessor or by others, at the discretion of the Lessor. This payment shall be made without protest and within the specified time as indicated by the invoice provided by the Department.

ARTICLE VI  
Operation of Facilities

Section 6.01. Scope of Lease.

The concession granted under the provisions of this Lease is as follows:

**Final Scope of Lease will be determined by proposals and negotiations. This verbiage will then be placed here.**

Section 6.02. Rates and Prices.

All rates and prices charged by the Lessee for accommodations, merchandise and services furnished, rented or sold to the public shall be competitive with comparable developments in the area

Section 6.03. Facilities Open to Public.

The Lessee shall not discriminate against any employee or applicant for employment or against any person seeking to utilize the facilities or services provided under the provisions of this Lease on the basis of race, creed, color, ancestry, national origin or political affiliation. Such action shall include, but not be limited to, the following: employment, promotion, demotion, transfer, recruitment, training, termination, rate of pay, or other forms of compensation and in the services provided to the public. Provisions of this Section shall apply and be included in any construction contract entered into by and between the Lessee and a third party.

Section 6.04 Standards

The Lessee shall give the business daily, personal supervision and shall operate the business under the lease according to law. The Lessee shall establish, maintain, and operate the concession in such manner as to provide the prescribed services to the public according to the best standards prevailing for a similar business.

The Lessee shall be present at the concession at all times that it is open for business or shall be represented by a responsible person.

Standards and rules for sanitation and safety, as established by the Indiana State Board of Health and the State Fire Marshal shall be followed.

Section 6.05. Promotional Activities.

Because the successful operation and use of the property may depend in part upon adequate advertising and promotional activities designed to acquaint the public with the kinds and availability of the facilities on and in the vicinity of the Leased Real Estate, such advertising and promotional activities as Lessee shall deem adequate shall be commenced as soon as reasonably possible and practical. The Lessor will consult with, advise and furnish information to the Lessee which will be of assistance in the preparation of promotional



material as herein provided for. The form of all brochures, displays and other advertising and other similar matter to be used in connection with the operation of the properties, including any signs approved by the Lessor in or on the Leased Real Estate, shall indicate that the Leased Real Estate and its facilities are operated under a lease with the Indiana Department of Natural Resources for the benefit and patronage of the public.

Section 6.06. Approval of Forms used by Lessee.

Lessee agrees to provide copies of documents/forms used in conjunction with the operation to Lessor. These include, but are not limited to: reservation folios, registration cards, banquet/ conference contracts, menus, emergency procedures, policies and accountable forms. The Lessor reserves the right to approve, disapprove, or amend such documents/forms as deemed necessary. Lessee further agrees to use standardized documents/forms or to develop forms using language provided by the Lessor.

Section 6.07 Visitation

The Lessor does not guarantee a specific number of visitors to the property and accepts no responsibility for the lack of visitors for any reason. There may be instances where the Lessor may determine that in the best interest of the public, or in the best interest of the operation of the property, that the property may be closed which may cause the Leased Real Estate to also be closed. The Lessee agrees that they will follow directions from the Lessor's on site property manager or from a delegate from the Lessor's Central Office during these instances. All effort will be made by the Lessor to keep this time to as short as possible, but there may be times when this may be out of the Lessor's discretion.

Section 6.08 Supervision by Property Manager

The Lessor is responsible for the general management of the area on which this concession is located. The day-to-day operation of the Lessee, with respect to the quality of service rendered, sanitation, maintenance and other operational matters as the Lessor may designate shall be determined by the property manager.

ARTICLE VII  
Employees

Section 7.01. Lessee's Employees.

Lessee will employ only competent and orderly employees, who will keep themselves as neat and clean as is consistent with the work being performed, and who will accord as courteous and competent treatment and service to all guests and patrons as is commensurate with the nature of employment of each of them and with the common good of all guests and patrons. The Lessor reserves the right to discuss complaints with the Lessee in regard to employee conduct. In some cases, the Lessor may even recommend termination of said employee. Lessee will investigate such complaint and report findings and resolution to the Lessor.

The Lessee shall operate the concession in a business-like manner and must maintain a high standard of conduct. The Lessee shall prohibit alcoholic beverage consumption, discourtesy to guests, and other undesirable acts by all employees. Failure by the Lessee to take action to correct or stop such behavior may be a material breach of this agreement, and may be grounds for immediate termination.

Section 7.02. Employee's Uniforms.

Employees of the Lessee shall wear uniforms or provide some means as to identify them as employees of the Lessee. The Lessor, through the Property Manager has the right to approve such uniforms.

Section 7.03. Independent Contractor.

Both parties hereto, in the performance of this Lease, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Lessee shall be responsible for providing all necessary unemployment and worker's compensation insurance for the Lessee's employees.



Section 7.04. Status of Lessee.

The Lessee is not an employee of the State of Indiana or of the Department. The Lease does not vest in the Lessee any title, tenure or any property belonging to the Department located on or around the premises to be occupied by the Lessee or anyone employed by the Lessee.

Section 7.05 Drug-Free Certification.

As required by Executive Order No. 90 5, April 12, 1990, issued by the Governor of Indiana, The Lessee hereby covenants and agrees to make a good faith effort to provide and maintain a drug free workplace. The Lessee will give written notice to the Lessor within ten (10) days after receiving actual notice that the Lessee or an employee of the Lessee in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Lease and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Lease is in excess of \$25,000.00, the Lessee hereby further agrees that this Lease is expressly subject to the terms, conditions, and representations of the following certification: This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Lessee and made a part of the lease or agreement as part of the lease documents.

The Lessee certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Lessee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Lessee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Lessee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the Lessor in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

Section 7.06. Nondiscrimination

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Lease, but nothing in this covenant shall be construed to imply or establish an employment relationship between the Lessor and any applicant or employee of the Lessee or any subcontractor. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Lessee covenants that it shall not discriminate against any employee or applicant for employment relating to this Lease with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Lessee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

#### Section 7.07 Indemnification

The Lessee agrees to indemnify, defend, and hold harmless the Lessor, its agents, officials, and the U.S. Government and the U.S. Corps of Engineers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Lessee and/or its subcontractors, if any, in the performance of this Lease. The Lessor shall **not** provide such indemnification to the Lessee.

#### Section 7.08 Debarment and Suspension

- A. The Lessee certifies by entering into this Lease that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Lease by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Lease means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Lessee.
- B. The Lessee certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Lease and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Lessee shall immediately notify the Lessor if any subcontractor becomes debarred or suspended, and shall, at the Lessor's request, take all steps required by the Lessor to terminate its contractual relationship with the subcontractor for work to be performed under this Lease.

#### Section 7.09 Employment Eligibility Verification.

As required by IC §22-5-1.7, the Lessee hereby swears or affirms under the penalties of perjury that:

- A. The Lessee has enrolled and is participating in the E-Verify program;
- B. The Lessee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Lessee does not knowingly employ an unauthorized alien.
- D. The Lessee shall require its contractors who perform work under this Lease to certify to Lessee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Lessee shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Lessee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

ARTICLE VIII  
Utilities

Section 8.01. Utilities.

The Lessee shall be responsible for furnishing such utilities to the facilities on the Leased Real Estate and shall pay for all such utilities. Nothing in the Lease shall be construed to indicate that the Lessor shall furnish or be responsible for the payment of electricity, fuel of any type, water, sewage or telephone service to the facilities located on the Leased Real Estate. Should any such services not be available or sufficient, the Lessee may secure the same from sources from outside the area, or it may install, at its own expense, all necessary plants, machinery and equipment to provide such services, after first having received permission from the Lessor. Lessor agrees to assist and cooperate with Lessee in every reasonable way possible in procuring any utility, facility, service, permit, license or approval needed by Lessee for the full utilization of the Leased Real Estate. The Lessor shall not be under any responsibility or liability whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas, electric current for light and power, telephone or any other service or utility. During each annual compliance inspection, the Lessee shall provide documentation indicating certification that all electrical utilities are in accordance with all applicable codes.

ARTICLE IX  
Use

Section 9.01. Use.

The Leased Real Estate shall be occupied and used solely for the purpose of conducting the business of operating the business as described in "Scope of Service" \_\_\_\_\_ and other related facilities and services approved by the Department of Natural Resources.

The Department may terminate this Lease at any time in order to protect Property visitors, protect, conserve, and preserve Property resources, or to limit visitor services in the Property to those that continue to be necessary and appropriate. The Department, at times during the Leased Term, has the authority to temporarily close the Property and/or access to the Licensed Area by the Licensee and/or the general public.

ARTICLE X  
Insurance and Indemnification

Section 10.01. Insurance.

A. The Lessee shall secure and keep in force during the term of this Lease, the following insurance coverage, covering the Lessee for any and all claims of any nature which may in any manner arise out of or result from Lessee's performance under this Lessee:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$2,000,000 per occurrence unless additional coverage is required by the Lessor. The Lessor is to be named as a additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Lessee.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$2,000,000 per occurrence. The Lessor is to be named as an additional insured on a primary, non-contributory basis.
3. The Lessee shall provide proof of such insurance coverage by tendering to the undersigned Lessor representative a certificate of insurance prior to the commencement of this Lease and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Lease involve work outside of Indiana.

B. The Lessee's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Lessee.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Lessee in excess of the minimum requirements set forth above. The duty to indemnify the State under this Lease shall not be limited by the insurance required in this Lease.
4. The insurance required in this Lease, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency. Failure to provide insurance as required in this Lease may be deemed a material breach of contract entitling the State to immediately terminate this Lease. The Lessee shall furnish a certificate of insurance and all endorsements to the Lessor before the commencement of this Lease.

Section 10.02. Indemnification.

The Lessee agrees to hold the Lessor harmless and indemnified against any liability for injury or death to any persons or damage to any property in or upon the Leased Real Estate, including the personal property of the Lessee and its employees and all persons in the Leased Real Estate at its or their invitation. The Lessee shall also indemnify the Lessor and the United States of America from all liability to the public and the Lessee's employees arising from any acts or omissions of the Lessee.

Section 10.03. Liability.

The Lessee agrees to indemnify and to hold the Lessor harmless against any liability for environmental damages caused by Lessee or its employees.

Section 10.04. Surety Bond.

The Lessee shall, as a condition precedent to entry of this Lease, furnish the Lessor with a surety bond conditioned upon faithful performance of the Lessee under this Lease. The value of the bond shall be:\_\_\_\_\_

The surety bond must be approved by the Assistant Director of Inns and Concessions before the Lessee is deemed to have complied with this provision. The concession will not open until this bond is in the Lessor's office. In lieu of the Surety Bond, the Lessee may provide a cash bond to the Lessor in the form of a Certificate of Deposit. This certificate must be written in the name of the Lessor and will be held by the Lessor until the end of the Original Term and any renewals and the complete payment of monies owed to the Lessor has been made. Upon this successful completion, the Lessor shall return the certificate to the Lessee. If the Lessee exercises this option in lieu of providing a surety bond, the face value of the certificate shall be in the same amount as the required bond as indicated above, and be in the possession of the Lessor before the Lessee will be allowed to open for business.

In lieu of the Surety Bond or cash bond in the form of a Certificate of Deposit, the Lessee may provide the Lessor advanced payment of the rental fees. The amount of the advanced payment shall be determined by the Assistant Director of Inns and Concessions and shall be payable before the operation is allowed to open for the season. Monthly reports as described under Section 3.05 , shall still be required to be completed and sent to the Assistant Director of Inns and Concessions. The monthly payment shall be deducted from the advanced payment held by the Lessor. If the advanced payment amount is depleted, the Assistant Director of Inns and Concessions may require an additional advanced payment to be sent to the Central Office. Any unused balance at the end of the season will be refunded via a claim voucher submitted by the Lessee to the Lessor. The amount of the initial advanced payment shall be \$\_\_\_\_\_.

ARTICLE XI

Damage to Leased Real Estate

Section 11.01. Damage to Leased Real Estate.

If at any time the improvements constituting part of the Leased Real Estate shall be destroyed, or damaged to such extent that such improvements cannot be used by Lessee, Lessee shall, at its own expense, promptly

restore such improvements to their former condition by rebuilding, repairing or replacing the same. Lessee shall, however, not be obligated to expend more than eighty percent (80%) of the full insurable value of such improvements (immediately prior to the date such improvements were destroyed or damaged) in rebuilding, repairing or replacing such improvements.

## ARTICLE XII

### Taking by Eminent Domain

#### Section 12.01. Taking by Eminent Domain.

If, during the Original Term and any renewals, the Leased Real Estate or any substantial portion thereof shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate and each party shall look to the taking authority for compensation for any and all damage, loss or injury suffered as a result of such taking. The term "substantial" shall mean any taking of more than fifty percent (50%) of the entire area constituting the Leased Real Estate. Should less than a substantial portion of the Leased Real Estate be taken and the Leased Real Estate can be used by the Lessee for the operation of its business, then an apportionate reduction in the Minimum Rental payable hereunder, taking into consideration the area taken, shall be agreed upon and this Lease shall continue in full force and effect as so modified.

## ARTICLE XIII

### Default and Remedies

#### Section 13.01. Rights on Lessee's Default.

If the Lessee defaults on its covenants to pay rent, or if the Lessee defaults on any other of its obligations under the Lease and such default continues for thirty (30) days after the receipt of written notice of the existence of such default (time being of the essence of this provision of this Lease), or if the Lessee shall abandon or vacate the Leased Real Estate before the end of the Original Term and any renewals, the Lessor, in any of such events, may thereupon take possession of the Leased Real Estate and relet the same or any portion thereof (which reletting may be for a term extending beyond the term of this Lease) without such action being deemed an acceptance of a surrender of this Lease or in any way terminating the Lessee's liability hereunder; and the Lessee shall remain liable to pay the rent herein reserved, less the net amount realized from such reletting, after deduction of any expenses incident to such repossession and reletting, or the Lessor at its option may without further notice terminate this Lease. Should the sum realized from such reletting by the Lessor, after deducting the cost of expense of repairs or alterations and the expense of reletting, be less than the rentals reserved herein, the Lessee agrees to pay such deficiency each month upon demand therefore. For the purpose of this Section, the rent for each Lease Year of the balance of the Original Term and any renewals shall be equal to one-third of the total Rental Fee paid by Lessee for the last three (3) full years of the Accounting Term immediately preceding such termination.

#### Section 13.02. Bankruptcy.

In the event the Lessee:

- is adjudicated as bankrupt;
  - has a receiver in equity appointed for its property and the appointment for such receiver is not set aside in ninety days, or requests or consents to the appointment of a receiver;
  - has a trustee in reorganization appointed for its property and the appointment of such trustee is not set aside within ninety (90) days;
  - files a voluntary petition for reorganization or arrangement;
  - files a voluntary petition in bankruptcy;
  - files an answer admitting bankruptcy or agreeing to a reorganization or arrangement;
  - makes an assignment for the benefit of its creditors;
- or
- permits the leasehold interest of the Lessee hereunder to be sold pursuant to execution: then in any such events, the Lessor may, at its option, terminate this Lease and immediately take possession of

the Leased Real Estate, using such force as may be necessary without being deemed guilty of trespass or forcible entry.

Section 13.03. Liquidated Damages.

This Lease has been established to provide services, goods, or both to the general public and the citizens of the State of Indiana. The Lessee's failure to comply with the various provisions of the Lease may cause a loss of services or goods to those visitors, and also may cause untimely delays in the administration of this Lease, depriving the Lessor of the agreed upon services or causing loss of revenue. The Lessee's failure to comply with the provisions of this Lease, will subject the Lessee to a system of liquidated damages as stated below. Acts of God that cause delays or failure to comply with the Lease are not subject to Liquidated damages as set forth below.

Violations which occur in any Section of the Lease may result in untimely delays in the administration of the License or a loss of services to the public. The Lessee will be provided with a "Notice of Violation" stating which provision has been violated and a date by which the stated violation must be corrected. If the violation has not been corrected by the date specified, the Lessee agrees to pay the Lessor liquidated damages in the sum of \$100.00.

If the violation has still not been corrected after a period of seven (7) days after the specified date, the Lessee agrees to pay an additional \$300.00 in liquidated damages. An additional \$300.00 fine shall be imposed for each additional seven (7) day period of time until the violation has been corrected. Continued failure to correct this violation may result in immediate termination.

The system of progressive liquidated damages is supplemental to and not in lieu of the Lessee performing according to the Lease provisions and multiple violations may be grounds for immediate termination of the Lease. The Lessor reserves the right to waive damages. The decision of the Lessor is final. Violations of the above listed Sections may be cause for the Lessor to terminate the Lease immediately, examples of which include, but are not limited to, discourteousness to the public, insurance cancellation, bond cancellation, alcohol abuse, and other circumstances which could cause harm to the public or the Lessor, or reflect adversely on the Lessor.

Section 13.04. Default in Performance of Covenant - Lessee.

In the event the Lessee shall be in default of any of the covenants contained herein, other than the covenant to pay rent, and such default continues for thirty (30) days after the receipt of written notice of the existence of such default (time being of the essence of this provision of this Lease), the Lessor may perform any covenant of the Lessee as to which the Lessee is in default, and any and all sums paid by Lessor in performance of such covenants, plus interest charges of eight percent (8%) per annum for amounts paid shall be Additional Rental and shall be paid by the Lessee as such. All Rental payments as to which the Lessee is in default shall bear interest at the rate of eight percent (8%) per annum until paid.

Section 13.05. Waiver of Lessee's Default.

No waiver of any covenant or condition or the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the non-observance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance of rent by Lessor at any time when Lessee is in default under any covenant or condition herein, be construed as a waiver of such default or of Lessor's right to terminate this Lease on account of such default, nor shall any waiver or indulgence granted by Lessor to Lessee be taken as an estoppel against Lessor, it being expressly understood that if at any time Lessee shall be in default in any covenants or conditions hereunder an acceptance by Lessor of rental during the continuance of such default or the failure on the part of Lessor promptly to avail itself of such other rights or remedies as Lessor may have, shall not be construed as a waiver of such default, but Lessor may at any time thereafter, if such default continues, terminate this Lease on account of such default in the manner herein before provided.

Section 13.06. Leasehold Mortgages.

Lessee shall have the right at any time during the Term to grant one or more Mortgages of the Lessee Improvements separately from interests in any other property owned or leased from time to time by Lessee. The execution and delivery of any Mortgage shall not be deemed to constitute an assignment of this Lease, and no Mortgagee shall be (a) deemed to be an assignee of this Lease or (b) required to assume the performance of any of the terms, conditions, covenants or agreements of this Lease to be performed by Lessee. Lessee shall (a) give Lessor prompt written notice of the execution and delivery of each Mortgage and (b) furnish to Lessor a true, accurate and complete copy thereof. Under no circumstances shall Lessee attempt to mortgage any property belonging to the Department or State of Indiana.

**Section 13.07. Rights of Mortgagees Upon an Event of Default.**

For a period of sixty (60) days after the later of (a) receipt by a Mortgagee of a Notice of Default or (b) the expiration of the applicable cure period for the Event of Default specified in such Notice of Default, that Mortgagee shall have the right to cure or cause to be cured the Event of Default, and Lessor shall accept performance by a Mortgagee as performance by Lessee. If a Mortgagee notifies Lessor within such period of sixty (60) days that it intends to obtain possession of the Leased Real Estate, the Lessee Improvements and/or a part thereof, appoint a receiver for the Leased Real Estate, the Lessee Improvements and/or a part thereof or foreclose its Mortgage, then Lessor shall not terminate or take action to effect a termination of this Lease without first giving to that Mortgagee a reasonable period of time within which it may (a) obtain possession of the Leased Real Estate, the Lessee Improvements and/or the part thereof encumbered by the Mortgage and cure or cause to be cured such Event of Default, (b) perfect the appointment of a receiver for the Leased Real Estate, the Lessee Improvements and/or the part thereof encumbered by the Mortgage and cure or cause to be cured such Event of Default or (c) institute and complete foreclosure proceedings or otherwise acquire the Lessee Improvements and/or the part thereof encumbered by the Mortgage; provided that no Mortgagee shall be required to continue in possession, continue a receivership or continue foreclosure proceedings after such Event of Default has been cured.

**Section 13.08. Extension to Cure and Foreclose.**

If Lessor elects to terminate this Lease for any Event of Default, then, in addition to the rights of Mortgagees under Section 13.07, any Mortgagee shall have the right to postpone and extend the date specified by Lessor for the termination of this Lease for a period of six (6) months; provided that any Mortgagee which exercises such right shall (a) cure or cause to be cured any uncured Events of Default curable solely by the payment of money, (b) diligently proceed to cure or cause to be cured all other Events of Default reasonably susceptible of being cured by the Mortgagee, (c) pay the Rent and comply with and perform all conditions, terms, covenants and agreements in this Lease to be performed by Lessee, and (d) commence and diligently proceed to complete the sale of the Lessee Improvements, and/or the part thereof encumbered by the Mortgage by foreclosure of the Mortgage or otherwise. If a Mortgagee is actively engaged in selling or attempting to sell Lessee Improvements, and/or the part thereof encumbered by the Mortgage, then the period of six (6) months shall be extended for such additional period of time as may be reasonably necessary to complete the sale.

**Section 13.09. Rights of Mortgagees Upon the Termination of Lease.**

Notwithstanding any other condition, term, covenant or agreement in this Lease, if Lessor purports to terminate this Lease for any reason prior to the expiration of the Original Term, then, upon the election of any Mortgagee, Lessor shall (a) enter into a lease of the Leased Real Estate with that Mortgagee, or its nominee, for the remainder of the Original Term, effective as of the date of such purported termination, at the rents and upon the same conditions, terms, covenants and agreements as in this Lease, including without limitation, the options to extend the Original Term pursuant to Article II, and (b) simultaneously with the execution and delivery of such lease, assign to the Mortgagee, or its nominee, all Subleases. The Subleases shall (a) survive any terminations of this Lease and any assignment to a Mortgagee or its nominee and (b) remain in full force and effect in accordance with their terms. To exercise such election, a Mortgagee shall give written notice to Landlord of the election within sixty (60) days after the date of a purported termination. After exercising such election, that Mortgagee, or its nominee, shall (a) pay or cause to be paid to Lessor on the commencement date of the term of such lease all unpaid Rent, (b) cure or cause to be cured all uncured Events of Default which are curable by the payment of money and (c) diligently proceed to cure or cause to be cured all other Events of Default reasonably susceptible of being cured by that Mortgagee. If Lessor and a Mortgagee, or its nominee, enter into a lease pursuant to this Section, then the purported termination shall be deemed ineffective and



void ab initio, and the lease shall be deemed to be a continuation of this Lease for all purposes under applicable law.

Section 13.10. No Obligation to Cure.

No condition, term, covenant or agreement in this Lease shall be deemed to or shall require any Mortgagee to cure or cause a cure of any default of Lessee, unless such Mortgagee elects to exercise its rights under Sections 13.07, 13.08 or 13.09 for which cure of defaults is a condition.

Section 13.11. Insurance and Condemnation Proceeds.

The conditions, terms, covenants and agreements of this Lease concerning the application of Insurance Proceeds or Condemnation Awards for Lessee Improvements are subject to any rights reserved in any Mortgage by a Mortgagee to apply all or any part of the Insurance Proceeds or condemnation Awards for Lessee Improvements to the indebtedness secured by a Mortgage.

Section 13.12. Modification of Lease.

If a prospective Mortgagee requests reasonable modifications in this Lease as a condition to making a Mortgage Loan to Lessee, then Lessor shall execute an agreement in recordable form modifying this Lease as requested by the Mortgagee; provided that no such modifications shall affect Lessor or its rights hereunder in any material adverse respect.

Section 13.13. Restrictions on Mortgages.

During the Original Term or any renewals, Landlord shall not have the right or power to (a) mortgage or otherwise grant any security interest in, or other liens or encumbrances upon the Leased Real Estate, the right, title, interest and estate of Lessor in and to the Leased Real, the Improvements, and fixtures, equipment or other personal property at any time and from time to time located on the Leased Premises, or any part thereof, or (b) to amend, modify, extend, renew, replace, refinance or otherwise change or affect any Mortgage.

Section 13.14. Estate of Landlord Not Subordinated.

No condition, term, covenant or agreement of this Lease shall be deemed to (a) constitute a subordination of the right, title, interest and estate of Lessor in and to the Leased Real Estate to any Mortgage or (b) require Landlord to execute any Mortgage or other document or instrument to effect any such subordination.

ARTICLE XIV  
Miscellaneous

Section 14.01. Taxes.

Any and all taxes, which may be lawfully imposed by the federal government, by the State of Indiana or by any political subdivision thereof upon the property or business of the Lessee on the Leased Real Estate, shall be paid promptly as due by the Lessee.

Section 14.02. Liens.

Lessee agrees to pay the discharge and indemnify Lessor against all liens and encumbrances of any nature and kind, whether arising by operation of law or by virtue of express or implied contract, which will attach to or be imposed on the Leased Real Estate as a consequence, direct or indirect, of any act or omission of Lessee or as a consequence, direct or indirect, of the existence of Lessee's interest under this Lease.

Section 14.03. Title to Property.

Title to any and all buildings, structures and other improvements erected or placed on the Leased Real Estate by the Lessee, which are so permanently fixed to the real estate as to become legally a part of the real estate is vested in the State of Indiana. This would include any building structure that is not portable. All other property placed or erected on the Leased Real Estate shall belong to the Lessee.

Section 14.04. Right of Entry.

At all times during the Original Term of this Lease, the Lessor shall have the right to enter upon the Leased Real Estate for the purpose of inspecting same or make alterations or improvements, without such entry in any manner affecting the obligations of the Lessee hereunder.

Section 14.05. Assignment or Sublease.

Lessee agrees not to assign, sublet, mortgage, pledge or encumber this Lease without first obtaining the written consent of the Lessor. If Lessee is a corporation, then any transfer of the Lease by merger, consolidation or liquidation, or any change in ownership or power to vote the majority of its outstanding voting stock shall constitute an assignment for the purpose of this Lease and shall require written consent of Lessor.

Section 14.07. Successors Bound.

This Lease shall be binding upon the respective grantees, successors and assigns of the Lessor and Lessee hereto.

Section 14.09. Governing Laws.

This Lease shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in Indiana.

Section 14.10. Legal Costs.

In the event Lessor finds it necessary to pursue legal action to recover monies owed by Lessee, Lessee shall also pay all court costs, attorney's fees and other costs incurred as a result thereof. If the court determines that the monies were not owed the Department, the Lessee shall not incur the costs on behalf of the state.

Section 14.11. Statutes.

The authorities for this lease are the following statutes: Indiana Code 14-19-1-2, 14-18-2-2, and 14-18-2-3.

Section 14.12. Penalties/Interest/Attorney's Fees.

The Department will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana Law, in part, IC 5-17-5-1, et seq., IC 34-2-22-1, et seq., and IC 34-4-16-1, et seq.

Section 14.13. Compliance with Laws.

A. The Lessee shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Lease shall be reviewed by the Lessor and the Lessee to determine whether the provisions of this Lease require formal modification

B. The Lessee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Lessee is not familiar with these ethical requirements, the Lessee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Lessee or its agents violate any applicable ethical standards, the Lessor may, in its sole discretion, terminate this Lease immediately upon notice to the Lessee. In addition, the Lessee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Lessee certifies by entering into this Lease that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Lessee agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Lessee. Additionally, further work or payments may be withheld, delayed, or denied

and/or this Lease suspended until the Lessee is current in its payments and has submitted proof of such payment to the State.

D. The Lessee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the Lessor of any such actions. During the term of such actions, the Lessee agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Lease.

E. If a valid dispute exists as to the Lessee's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Lessee, the Lessee may request that it be allowed to continue, or receive work, without delay. The Lessee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.

F. The Lessee warrants that the Lessee and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Lease and grounds for immediate termination and denial of further work with the State.

G. The Lessee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) The Lessee and any principals of the Lessee certify that:

(A) the Lessee, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC 24-5-12 [Telephone Solicitations]; or

(iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the Lessee will not violate the terms of IC 24-4.7 for the duration of the Lease, even if IC 24-4.7 is preempted by federal law.

(2) The Lessee and any principals of the Lessee certify that an affiliate or principal of the Lessee and any agent acting on behalf of the Lessee or on behalf of an affiliate or principal of the Lessee

(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

I. As required by IC §5-22-16.5, the Lessee certifies that the Lessee is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC §5-22-16.5-14 including termination of this Lease, denial of future state contracts, as well as an imposition of a civil penalty.

**Section 14.14. Substantial Performance.** This Lease shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modifications thereof.

**Section 14.15. DNR Property Regulations.**

The Lessee shall adhere to all DNR General Property Regulations as found in 310 IAC 5-1, 310 IAC 2.1, and 310 IAC 3.1-2-11 and successor regulations. These rules and regulations are duly promulgated pursuant to IC 4-22-2 and have the force and effect of Law. This paragraph is in conjunction with and not in lieu of Section 14.14 above.

**Section 14.16. Disputes.**

Should any disputes arise with respect to this Lease, the Lessee and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

The Lessee agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Lease which are not affected by the dispute. Should the Lessee fail to continue without delay to perform its responsibilities under this Lease in the accomplishment of all non-disputed work, any additional costs incurred by the Lessee or the State as a result of such failure to proceed shall be borne by the Lessee, and the Lessee shall make no claim against the State of Indiana for such costs. If the Lessee and the State cannot resolve a dispute within ten (10) calendar days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Lessee and the State within ten (10) calendar days after presentation of such dispute for his/her decision. His/her decision shall be final and conclusive unless the Lessee mails or otherwise furnishes to the Commissioner of Administration, within ten (10) days after receipt of the Commissioner's decision, a written appeal. Within ten (10) days of receipt by the Commissioner of a written request for appeal, he/she may reconsider his/her decision. If no reconsideration is provided within ten (10) days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Lessee of one or more invoices not in dispute in accordance with the terms of this Lease will not be cause for Lessee to terminate this Lease, and the Lessee may bring suit to collect without following the disputes procedure contained herein.

The parties having read and understanding the foregoing terms of the Lease do by their respective signatures dated below hereby agree to the terms thereof, including, if this Lease is in excess of \$25,000, the Drug-Free Workplace Certification.

Section 14.17. Conflict of Interest.

As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

1. The individual executing this Lease;
2. An individual who has an interest of three percent (3%) or more of Lessee, if Lessee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

The Department may cancel this Lease without recourse by Lessee if any interested party is an employee of the State of Indiana.

The Department will not exercise its right of cancellation under Section B above if Lessee gives the department an opinion by the Commission indicating that the existence of this Lease and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Lease consistent with an opinion of the Commission obtained under this section.

Lessee has an affirmative obligation under this Lease to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts which Lessee knows or reasonably could know.

#### Section 14.19 Termination

- a) If this Lease is terminated before completion of the Original Term or any renewals, the Lessee shall vacate the premises within forty five (45) days of termination unless a lesser period of time is provided by court order. Lessee and/or his agents shall remove no personal property on which the Lessor is given a lien from the Leased Real Estate unless otherwise directed by court order, until all Rental Fees and other sums owed to the Lessor have been paid.
- b) If an Act of God renders this Lease inoperable for more than two hundred forty (240) days, this Lease shall automatically terminate as of the date of that Act. The Lessor shall receive its Rental Fee on all income to the date of termination, or to the date of sixty (60) days after termination, whichever income is greater, as if the Original Term or any renewals were then completed.
- c) If the Lessee fails to make timely cure of repeated violations, the Director may terminate this Lease upon written notice of such termination by certified mail, or this notification may be delivered in person. The Lessor shall receive its Rental Fee on all income to the date of termination as if the Original Term or any renewals were then completed. The Lessee shall further pay to the Lessor, as liquidated damages for breach of performance and for future performance, the sum of \$1,000.00. This sum, plus any Rental Fees shall be paid to the Lessor within fifteen (15) days of such termination.
- d) If the Lessee terminates this Lease, the provisions relating to disbursement of income and to liquidated damages in Section U(3) shall apply. If, however, the Lessee gives written notice, by certified mail, to the Lessor at least 30 days prior to the date of termination, the amount of liquidated damages shall be \$500.00 and not \$1,000.00. This fee, and all Rental Fees shall be paid at the time of termination.
- e) If the Lessee dies or becomes incapacitated, the Lease may be deemed terminated by the Lessee and the provisions relating to the disbursement of income in Section U(1) shall apply, or, at its discretion, the Lessor may authorize the estate, guardian, or conservator of the Lessee to operate the facilities under the terms of this Lease until completion of the Original Term or any renewals.
- f) The Lessor may, in cases where continued operation by the Lessee may result in significant or irreparable harm to the Lessor and/or the public, terminate the Lease immediately. Examples include, but are not limited to, non-payment of fees, discourteousness to the public, insurance cancellation, bond cancellation, alcohol abuse, and other circumstances which could cause harm to the public or the Lessor or reflect adversely on the Lessor. All fees payable to the Lessor shall be paid within 15 days of such termination along with a liquidated damages sum of \$1,000.00 for breach of performance.
- g) If the Lessor finds it necessary to pursue legal action to recover monies owed by Lessee, Lessee shall also pay all court costs, attorney's fees, and other costs incurred as a result thereof.
- h) When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Lease, the Lease shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- i) This Lease may be terminated, in whole or in part, by the Lessor whenever, for any reason, the Lessor determines that such termination is in the best interest of the Lessor. Termination of services shall be effected by delivery to the Lessee of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Lessee shall be compensated for services rendered prior to the effective date of termination. The Lessor will not be liable for services performed after notice of termination. The Lessor shall be compensated for services herein provided but in no case shall total

payment made to Lessor exceed the original Lease price due on the Lease or shall any price increase be allowed on individual line items if cancelled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

#### Section 14.20 Severability

The invalidity of any section, subsection, clause or provision of this Lease shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Lease.

#### Section 14.21 Force Majeure

In the event that either party is unable to perform any of its obligations under this Lease or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Lease shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Lease.

#### Section 14.22 Ethics

The Licensee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Licensee is not familiar with these ethical requirements, the Licensee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Licensee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Licensee. In addition, the Licensee may be subject to penalties under Indiana Code § 4-2-6-12.

#### Section 14.23. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this Lease shall be resolved by giving precedence in the following order: (1) This Lease, (2) attachments prepared by the Lessor, (3) Prospectus, (4) Lessee's response to Prospectus. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

#### Section 14.24. Waiver of Rights

No right conferred on either party under this Lease shall be deemed waived, and no breach of this Lease excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the Lessor's review, approval or acceptance of, nor payment for, the services required under this Lease shall be construed to operate as a waiver of any rights under this Lease or of any cause of action arising out of the performance of this Lease, and the Lessee shall be and remain liable to the Lessor in accordance with applicable law for all damages to the Lessor caused by the Lessee's negligent performance of any of the services furnished under this Lease.

#### Section 14.25 Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Lease, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

#### Section 14.26. Non-Collusion and Acceptance

The undersigned attests under penalties of perjury that he/she is the Leasing party, or that he/she is the representative, agent, member or officer of the Leasing party and that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

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"LESSOR"  
STATE OF INDIANA  
BY ITS  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cameron F. Clark, Director

Date \_\_\_\_\_

STATE OF INDIANA       }  
                                      } SS:  
COUNTY OF MARION    }



Before the undersigned, a Notary Public in and for said County and State, on this \_\_\_\_ day of \_\_\_\_\_, 2010, personally appeared Rober E Carter, JR., Director of the Department of Natural Resources of the State of Indiana, and on behalf of such Department acknowledged its execution of the foregoing Lease Agreement.

Witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My commission expires:

\_\_\_\_\_

"LESSEE"

\_\_\_\_\_.

By \_\_\_\_\_, President  
Taxpayer ID # \_\_\_\_\_

Date \_\_\_\_\_

STATE OF INDIANA     }  
  } SS:  
COUNTY OF \_\_\_\_\_}

Before the undersigned, Notary Public in and for said County and State, on this \_\_\_\_ day of \_\_\_\_\_, 201\_, personally appeared \_\_\_\_\_, President, and \_\_\_\_\_, President, \_\_\_\_\_, Inc., and on behalf of such corporation acknowledged its execution of the foregoing Lease Agreement.

Witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My commission expires:

\_\_\_\_\_

APPROVED:

\_\_\_\_\_, Commissioner  
Indiana Department of Administration  
Date\_\_\_\_\_

APPROVED:

\_\_\_\_\_, Director  
State Budget Agency  
Date\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Attorney General of Indiana  
Date\_\_\_\_\_